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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 YOHVAUGHN C. BROWN,

Case No. 2:18-cv-01643-JAD-PAL

8 Plaintiff,

9 v.

**SCREENING ORDER**

10 NANCY A. BERRYHILL, Acting  
11 Commissioner of Social Security,

(IFP App. – ECF No. 1)

12 Defendant.

13 Plaintiff Yohvaughn C. Brown's has submitted an Application to Proceed *In Forma*  
14 *Pauperis* (ECF No. 1) along with a proposed Complaint (ECF No. 1-1). The Application and  
15 Complaint are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of  
16 the Local Rules of Practice.

17 **I. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

18 Ms. Brown's Application includes the affidavit required by § 1915(a) showing an inability  
19 to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma*  
20 *pauperis* ("IFP") will be granted. The court will now review the proposed complaint.

21 **II. SCREENING THE COMPLAINT**

22 **A. Legal Standards**

23 After granting a request to proceed IFP, federal courts must screen a complaint and any  
24 amended complaints before allowing a case to move forward, issuing summonses, and requiring a  
25 responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Courts are  
26 required to dismiss an IFP action if the complaint fails to state a claim upon which relief may be  
27 granted, is legally "frivolous or malicious," or seeks money from a defendant who is immune from  
28 such relief. 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed

1 to state a claim upon which relief can be granted under § 1915 is the same as the standard under  
2 Rule 12(b)(6) of the Federal Rules of Civil Procedure<sup>1</sup> for failure to state a claim. *Watison v.*  
3 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). A screening under Rule 12(b)(6) is essentially a  
4 ruling on a question of law. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

5 A properly pled complaint must provide “a short and plain statement of the claim showing  
6 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must  
7 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*  
8 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual  
9 content that allows the court to make a reasonable inference that a defendant is liable for the claim  
10 alleged. *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*  
11 *Iqbal*, 556 U.S. 662, 678 (2009)). This plausibility standard is not a “ ‘probability requirement,’  
12 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556  
13 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Although Rule 8(a) does not require detailed  
14 factual allegations, it demands “more than labels and conclusions.” *Iqbal*, 556 U.S. at 678.  
15 Allegations in a pro se complaint are held to less stringent standards than formal pleading drafted  
16 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2010).

17 Here, Ms. Brown challenges a decision by the Social Security Administration (“SSA”)   
18 denying her disability insurance benefits and supplemental security income under Title II of the   
19 Social Security Act. Compl. (ECF No. 1-1) at ¶ 3. To state a valid benefits claim, a complaint   
20 must give the Commissioner fair notice of what the plaintiff’s claim is and the grounds upon which   
21 it rests. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (noting that a complaint must   
22 contain sufficient factual allegations “to enable the opposing party to defend itself effectively”).   
23 A plaintiff must present sufficient detail for the court to understand the disputed issues so that it   
24 can meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016); 2 Soc. Sec.   
25 Disab. Claims Prac. & Proc. §§ 19:92–93 (2nd ed. 2015). To do so, a complaint should state *when*   
26 and *how* a plaintiff exhausted her administrative remedies with the SSA and the nature of her   
27 disability, including the date she claims she became disabled. The complaint should also contain

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28 <sup>1</sup> All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

1 a short and concise statement identifying *why* the SSA’s decision was wrong and showing that the  
2 plaintiff is entitled to relief. *Sabbia v. Comm’r Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D.  
3 Ill. 2009), *aff’d* by 433 F. App’x 462 (7th Cir. 2011).

#### 4 **B. Exhaustion of Administrative Remedies**

5 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative  
6 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)  
7 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been  
8 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
9 claim”). Generally, if the SSA denies an application for disability benefits, a claimant can request  
10 reconsideration of the decision. If the claim is denied upon reconsideration, a claimant may request  
11 a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant  
12 may request review of the decision by the Appeals Council. If the Appeals Council declines  
13 review, a claimant may then request review by the United States District Court. *See* 20 C.F.R.  
14 §§ 404.981, 416.1481. A civil action for judicial review must be commenced within 60 days after  
15 receipt of the Appeals Council’s notice of a final decision. *Id.*; 20 C.F.R. § 405.501. The SSA  
16 assumes that the notice of final decision will be received within five days of the date on the notice  
17 unless shown otherwise; thus, an action commenced within 65 days is presumed timely. The civil  
18 action must be filed in the judicial district in which the plaintiff resides. 42 U.S.C. § 405(g).

19 In this case, Ms. Brown alleges that on August 17, 2018, the Appeals Council denied the  
20 request for review and the ALJ’s decision became the final decision of the Commissioner. Compl.  
21 ¶ 8. Thus, it appears she has exhausted her administrative remedies. She timely commenced this  
22 action as the Complaint was filed on August 29, 2018, and the Complaint indicates that she resides  
23 within the District of Nevada. *Id.* ¶ 1. Accordingly, Ms. Brown has satisfied these prerequisites  
24 for judicial review.

#### 25 **III. GROUNDS FOR MS. BROWN’S APPEAL**

26 The Complaint seeks judicial review of the Commissioner’s decision benefits and asks the  
27 court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district  
28 court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his administrative

1 remedies and timely filed a civil action. However, judicial review of the Commissioner's final  
2 decision is limited to determining whether: (1) there is substantial evidence in the record as a whole  
3 to support the Commissioner's findings; and (2) the correct legal standards were applied. *Morgan*  
4 *v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

5 In her Complaint, Ms. Brown alleges she has been disabled from June 10, 2011, her alleged  
6 onset date, through December 31, 2013, her date last insured. Compl. ¶ 5. The ALJ found Brown  
7 to have the severe impairments of systemic lupus erythematosus; depression; obesity; asthma;  
8 obstructive sleep apnea; osteoarthritis; and knee impairment. *Id.* ¶ 9(a). Despite her severe  
9 impairments, the ALJ found that Ms. Brown had the residual functional capacity to perform

10 sedentary work, except frequently reaching overhead to the left and frequently  
11 reaching overhead to the right. For all other reaching, she can reach frequently to  
12 the left and frequently to the right. Brown has fingering limitations frequently with  
13 the left hand, and has fingering limitations frequently with the right hand. Brown  
14 can occasionally climb ramps and stairs; never climb ladders, ropes, or scaffolds;  
15 occasionally balance, stoop, kneel, crouch, crawl; occasionally work at unprotected  
16 heights; occasionally have exposure to moving mechanical parts, and operate a  
motor vehicle; occasionally be in humidity, wetness, dust, odors, fumes, pulmonary  
irritants, extreme cold, and vibration. Brown is able to understand, carry out,  
remember, perform simple, routine, and repetitive tasks but not at a production rate  
pace but would complete all end of day goals involving only simple work-related  
decisions with the ability to adapt only to routine work place changes; and  
frequently interact with supervisors, coworkers, and the general public.

17 *Id.* ¶ 9(b). The ALJ found that she could not perform her past relevant work but, relying on a  
18 vocational expert's testimony, found that she could perform other work as a document preparer,  
19 addresser, and surveillance system monitor. *Id.* ¶ 9(c), (d).

20 Ms. Brown alleges that the ALJ's decision lacks the support of substantial evidence  
21 because the vocational expert's testimony concerning the cited occupations was that consistent  
22 with the information with the *Dictionary of Occupational Titles* and agency policy. *Id.* ¶ 9(e).  
23 Brown asserts the ALJ further erred by improperly rejecting her pain and symptom testimony. *Id.*  
24 ¶ 9(e). The Complaint contains sufficient allegations of underlying facts to give the Commissioner  
25 fair notice of Ms. Brown's disagreement with the SSA's final determination. Accordingly, she  
26 has stated a claim for initial screening purposes under 28 U.S.C. § 1915.

27 Based on the foregoing,

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1           **IT IS ORDERED:**

- 2           1. Plaintiff Yohvaughn C. Brown's Application to Proceed *In Forma Pauperis* (ECF
- 3           No. 1) is **GRANTED**. She will not be required to pay the \$400 filing fee.
- 4           2. Ms. Brown is permitted to maintain this action to conclusion without prepaying any
- 5           fees or costs or giving security therefor. However, this Order granting IFP status does
- 6           not extend to the issuance and/or service of subpoenas at government expense.
- 7           3. The Clerk of the Court shall **FILE** the Complaint.
- 8           4. The Clerk of the Court shall **ISSUE SUMMONS** to the United States Attorney for the
- 9           District of Nevada and **DELIVER** the summons and Complaint to the U.S. Marshal
- 10          for service.
- 11          5. The Clerk of Court shall also **ISSUE SUMMONS** to the Commissioner of Social
- 12          Security and Attorney General of the United States.
- 13          6. Ms. Brown shall **SERVE** the Commissioner of Social Security by sending a copy of
- 14          the summons and Complaint by certified mail to: (1) Office of the Regional Chief
- 15          Counsel, Region IX, Social Security Administration, 160 Spear Street, Suite 800, San
- 16          Francisco, California 94105-1545; and (2) Attorney General of the United States,
- 17          Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington,
- 18          D.C. 20530.
- 19          7. Following the Commissioner's filing of an answer, the court will issue a scheduling
- 20          order setting a briefing schedule.
- 21          8. From this point forward, Ms. Brown shall serve upon Commissioner or, if appearance
- 22          has been entered by counsel, upon the attorney, a copy of every pleading, motion, or
- 23          other document filed with the Clerk of the Court pursuant to LR IC 1-1 and 4-1 of the
- 24          Local Rules of Practice. In accordance with LR IC 4-1(d), the parties shall include
- 25          with each filing a certificate of service stating that a true and correct copy of the
- 26          document was served on an opposing party or counsel for an opposing party and
- 27          indicating how service was accomplished. The court may disregard any paper received
- 28          by a district judge or magistrate judge that has not been filed with the Clerk of the

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Court, and any paper received by a district judge, magistrate judge, or the Clerk of the Court that fails to include a certificate of service.

Dated this 17th day of October, 2018.

  
PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE